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LIBERTY MUTUAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GUSTAVAS VARLACK,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY and DOES 1-25, inclusive,

Defendants.

Case No.

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. § 1332.**

Complaint Served:
March 24, 2021

(Removal from the Superior Court of
California for the County of Alameda, Case
No. 22CV008616)

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO PLAINTIFF
2 GUSTAVAS VARLACK AND HIS ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1332(a)(1) and 28 U.S.C. § 1446(b),
4 Defendant Liberty Mutual Insurance Co. (“Liberty”) hereby removes this action from the Superior
5 Court of California, County of Alameda, to the United States District Court for the Northern District
6 of California. Removal is proper in this case based on the following grounds:

7 **STATE COURT ACTION**

8 1. On March 18, 2022, Plaintiff Gustavas Varlack (“Plaintiff”) commenced an action
9 in Alameda County Superior Court, Case No. 22CV008616 (the “State Court Action”).

10 2. A copy of the complaint in the State Court Action was served on Liberty on March
11 24, 2022.

12 3. The State Court Action asserts claims for breach of contract, breach of covenant of
13 good faith and fair dealing, unfair business practices, common counts, and fraud against Liberty.

14 4. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served
15 upon Liberty in this matter or which have so far been obtained by Liberty from the Court and
16 Plaintiff’s counsel are attached hereto as **Exhibits 1-7**, all of which are incorporated herein by this
17 reference, including the allegations contained in the complaint concerning jurisdiction, citizenship,
18 and venue, and the remainder of which will be provided when received.

19 5. The following constitute all of the available processes, pleadings, or orders that have
20 been filed in the State Court Action and/or served upon or received by the undersigned counsel for
21 Liberty as of the time of the filing of this removal. True and correct copies of the following
22 documents are attached to this Notice of Removal:

- 23 A. Complaint (Exhibit 1)
- 24 B. Summons (Exhibit 2)
- 25 C. Notice of Case Management Conference (Exhibit 3)
- 26 D. Certificate of Mailing (Exhibit 4)
- 27 E. Civil Case Cover Sheet (Exhibit 5)
- 28 F. Proof of Service of Summons (Liberty) (Exhibit 6)

1 G. State Court Action docket (Exhibit 7).

2 6. The State Court Action is a civil action of which this Court has original jurisdiction
3 under 28 U.S.C. § 1332, and is one that may be removed to this Court by the defendant pursuant to
4 the provisions of 28 U.S.C. § 1441(b) and 28 U.S.C. § 1446(b)(3). There is diversity jurisdiction
5 under 28 U.S.C. § 1332(a)(1) because this is a civil action between citizens of different states and
6 the matter and amount in controversy exceeds \$75,000, exclusive of interest and costs.

7 **DIVERSITY OF CITIZENSHIP**

8 7. Plaintiff alleges it “is the business owner of Oakland Acupuncture & Integrative
9 Medicine Clinic located at 9 Grand Ave #13, Oakland, CA 94612.” Ex. 1 (Complaint), ¶ 4. The
10 Complaint does not provide any information regarding Plaintiff’s citizenship, but Plaintiff’s
11 counsel has represented to Defendant’s counsel that Plaintiff is not a citizen or domiciliary of either
12 Massachusetts or New Hampshire. Declaration of Jason R. Fair, ¶ 4, dated April 22, 2022, filed
13 concurrently herewith (Fair Declaration).

14 8. Liberty is a Massachusetts corporation organized under the laws of the
15 Commonwealth of Massachusetts and having its principal place of business in Boston,
16 Massachusetts, and thus is a citizen of the Commonwealth of Massachusetts only.¹

17 9. The parties identified in the Complaint as “Does 1-25” are fictitious parties whose
18 citizenship is disregarded for the purposes of removal. 28 U.S.C. § 1441(b)(1) (“For purposes of
19 removal under this Chapter, the citizenship of defendants sued under fictitious names shall be
20 disregarded.”).

21 **AMOUNT IN CONTROVERSY**

22 10. Where a plaintiff’s state court Complaint is silent as to the amount of damages
23 claimed, the removing defendant need only establish it is more probable than not that plaintiff’s

24 ¹ Liberty is incorrectly named as a defendant in this action because Plaintiff’s commercial property
25 insurance policy is underwritten by Ohio Security Insurance Company, which is incorporated in
26 New Hampshire and headquartered in Massachusetts. Liberty’s counsel has made Plaintiff’s
27 counsel aware of this fact, and Plaintiff’s counsel has agreed to substitute defendant Ohio Security
28 Insurance Company for defendant Liberty in this action. However, as of the date of the filing of
this Notice of Removal, Plaintiff has not filed his amended complaint correcting the identity of the
defendant. Even after Plaintiff amends his Complaint, there will be complete diversity of
citizenship because, as noted above, Plaintiff’s counsel has represented that Plaintiff is not a citizen
or domiciliary of either Massachusetts or New Hampshire. Fair Declaration, ¶ 4.

1 claim exceeds the jurisdictional minimum. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398,
 2 403-04 (9th Cir. 1996). Here, the Complaint does not specify the dollar amount of damages being
 3 sought. However, Plaintiff's counsel made a pre-suit written demand for damages in the amount
 4 of \$140,000, which exceeds the \$75,000 jurisdictional threshold. Fair Declaration, ¶ 3.

5 **TIMELINESS AND CONSENT**

6 11. This Notice of Removal is being filed by Liberty within thirty (30) days of March
 7 24, 2022 as required by 28 U.S.C. § 1446(b)(1).

8 12. As Liberty is the only (non-fictitious) defendant in this action, all defendants who
 9 have been served join in the removal of the action. *See* 28 U.S.C. § 1446(b)(2)(A).

10 **VENUE**

11 13. Venue in this Court is proper. Actions are removable from a state court to the district
 12 court that encompasses the county where the action was filed. 28 U.S.C. § 1446(a). The Alameda
 13 County Superior Court is located with the Northern District of California, where this Notice of
 14 Removal is being filed.

15 14. Although subject to the provisions of the contract out of which this action arises,
 16 venue is also proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the
 17 events or omissions giving rise to the claim as alleged in the complaint (incorporated by this
 18 reference) occurred, or are alleged to have occurred, within this judicial district.

19 **NOTICE**

20 15. Liberty represents that promptly after this filing, Notice of Removal shall be served
 21 on Plaintiff's counsel and a copy will be filed with the Clerk of Alameda County Superior Court.

22 **CONCLUSION**

23 16. Having established that the requirements for removal of the State Court Action are
 24 met, Liberty hereby gives notice of its removal.

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1 Dated: April 22, 2022

ROBINS KAPLAN LLP

2
3 By:


4 Jason R. Fair

5 Attorneys for Defendant
6 LIBERTY MUTUAL INSURANCE CO.
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